Supreme Court, U.S.
FILED

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No.

In the

Supreme Court of the United States

October Term 2000

LUANN JAMES,

Petitioner,

versus

GENERAL MOTORS CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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I

QUESTIONS PRESENTED

1/ May an ERISA plan administrator granted discretionary interpretation deny benefits by exercising this discretionary, interpretive authority contrary to the unambiguous, plain meaning of the plan language?

2/ What is the legal standard to determine whether the administrator's denial of benefits was contrary to the plain meaning of the plan's language?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in *LuAnn James v. General Motors Corporation,* 230 F. 3d 315 (7th Cir. 2000), is set forth in the Appendix(App. 1a-4a), and the order of December 5, 2000, denying James' petition for rehearing with suggestion for rehearing *en banc* is set forth in the Appendix (App. 4a).

The unreported decision of the District Court for the Southern District of Indiana in *LuAnn James v. General Motors Corporation* rendered on October 4, 1999 is set forth in the Appendix(5a-17 a).

STATEMENT OF JURISDICTION

The judgment of the United States court of Appeals for the Seventh Circuit was entered on October 16, 2000. The Court of Appeals denied a timely petition for rehearing and suggestion *en banc* on December 5, 2000.

The jurisdiction of this Court is pursuant to 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Employee Retirement Income Security Act of 1974(ERISA), 29 U.S.C. Secs. 1132 *et seq.*

STATEMENT OF THE CASE

The question in this case is whether a Plan Administrator empowered with discretionary interpretation over the granting or denial of plan benefits may deny benefits by interpreting the plan language contrary to its plain meaning.

The plan involved in this case was a severance plan involving the sale of the Allison Gas Turbine Division of General Motors Corporation. To prod those former GM employees to remain with the sold division, GM withdrew all of its regular severance benefits which were available to laid off or terminated (without cause) GM salaried employees. To entice Allison GM employees to remain with the sold division, GM promised a unique benefit to those employees who remained in the employ of the sold Division and it is that benefit that James sought in her action against GM.

A sold GM employee had to remain in the employ of the successor corporation(Rolls Royce) in order to receive the GM benefit in the event the sold employee was involuntarily terminated by the successor corporation. GM reserved discretionary authority to interpret this Allison Gas Turbine severance plan. The pertinent plan language promised James a benefit if she remained in the employ of the "successor corporation" and if she does not " you voluntarily" quit the employ of the "buyer." The Court of Appeals said "she was not entitled to GM(severance) benefits if she voluntarily quit her position at" (Rolls Royce)...James did not voluntarily quit because the Court of Appeals said that "she asked to stay with"(Rolls Royce) "for a lower pay."App.2a

A. Facts.

LuAnn James sought termination benefits from GM under an ERISA regulated "employee welfare plan." She was terminated from her employment at Rolls Royce Allison Engine Company. Rolls Royce was the purchaser/successor company of the former GM Allison Gas Turbine Division. James sought benefits which were promised by GM to induce its former employees to remain with the sold division.

Prior to December 1, 1993, James worked as a salaried employee of GM at its Allison Gas Turbine Division(AGTD) in Indianapolis, Indiana for nearly 19 years. Effective December 1, 1993, AGTD was sold to a venture capital firm and within one year Rolls Royce purchased

the company. James was offered continued employment with the successor company and she had the following options under the GM benefit plans specifically applicable to the AGTD sale:

> 1/ Refuse successor's job offer and be classified by GM as separated without any separation allowance from GM and seek employment elsewhere; specifically not at another GM facility;
> 2/ Accept successor's job offer and obtain the GM benefits covered by its benefit plan for GM employees following the sale of AGTD.

James accepted the successor's job offer. By 1995 she was a systems analyst and her last performance appraisal rated her as "outstanding" and she was responsible for the design, development and modification of complex computer systems. She developed new and creative approaches for solving complex problems. She exercised a high level of independent judgment and perception in solving problems.

In November, 1995 Rolls Royce decided to transfer some of its information technology functions to a contract supplier, Electronic Data Systems (EDS). While the Opinion below stated that Allison was sold to EDS such was not and never the case. App.2a. Petitioner brought this contrary, undisputed and stipulated fact to the Court's attention in her Petition for rehearing. EDS was a contract supplier of labor to Rolls Royce. It was not a "successor" company under the clear language of the GM Allison severance plan to which James sought benefit.

In August of 1995 GM announced its intention to "spin off" EDS as an independent company. The "spin" occurred in June of 1996. The employees of EDS were not GM employees. Rolls Royce said that all terminated employees would receive job offers from EDS and if the EDS job offer was not accepted there would be no employment for those employees at Rolls Royce. Rolls Royce said that if employees refused the EDS job offer, Rolls would consider them a voluntary quit from Rolls Royce and as such they would not be eligible for any of Rolls Royce's severance benefits.

James refused the EDS job offer and begged to remain at Rolls Royce even at a reduced salary in any reasonable capacity. Rolls refused and terminated her employment. James sought the GM benefits for former AGTD employees who accepted employment with the sold division(now Rolls Royce). GM denied her the requested benefits.

GM reasoning was...upon declining the EDS job offer, she was considered as a constructive voluntary quit by ("Rolls Royce")... because Rolls Royce considered her a quit, GM considered her to be a voluntary quit of her Rolls employment thus making her ineligible for benefits under the GM Allison sales severance plan.

The relevant plan language of the unique GM AGTD sale benefit plan provided for two alternative GM benefits if an employee of the successor company(Rolls Royce) is terminated within three years from the time of sale(December 1, 1993): 1/ a GM job search(re-start your GM career); 2/ if no suitable GM position offered then a fixed stipend approximately $20,000.00 for Ms. James. This unique AGTD sale plan had eligibility restrictions...the employee could not quit her position with the successor company(Rolls Royce) or be terminated for cause. The GM AGTD benefit plan further stated that any benefits under this plan will be terminated if "**you** voluntarily terminate your employment with the successor company."
Above Facts From the Joint Statement of Undisputed Facts.

B. Proceedings Below

The district court decided on cross motions for summary judgment that the denial of severance benefits by GM was not arbitrary or capricious. The Court of Appeals for the Seventh Circuit's decisional rationale parsed the plan language to one word "quit" and then stated... "This case...rests on how quit is defined..." and answered the question by asserting that "quit" is not ordinary and self defining. (App.3a-4a).

However, its earlier statement of the relevant plan language was much broader.

> "Plan documents said that she was not entitled to GM severance benefits if **she voluntarily quit** her position at (Rolls Royce)" App.1a (Emphasis added)

Having concluded that the one word "quit" was not self-defining, the Court found that GM's denial of benefits was not arbitrary.

LuAnn James consistently argued that under the relevant severance plan which was a discrete severance plan available only to former Allison salaried employees who were offered and accepted positions with the successor company(Rolls Royce), the plan language "you(she) voluntarily quit" your position at the successor company(Rolls

Royce) was of plain meaning and unambiguous with respect to the promise made by GM to induce her to accept the job with the successor company and like the physical assets be sold to Rolls Royce. GM relied only upon Rolls Royce's interpretation of Rolls Royce's severance plan to conclude that James voluntarily quit her position at the successor Rolls Royce.

The Court distinguished its plain meaning holding in *Anstett v. Eagle-Picher Industries, Inc.*, 203 F. 3d 501, 505-06 (7th Cir. 2000) because the administrator lacked discretionary interpretive authority; whereas, GM had discretionary authority in James' claim for benefits. App. 4a. The Opinion below, limited judicial interpretation of the plain meaning of plan language to those plans under *de novo* review. But see *Cozzie v. Metropolitan Life Ins. Co.*, 140 F. 3d 1104, 1109 (7th Cir. 1998) and *Carr v. Health Care Plan*, 195 F. 3d 292 (7th Cir. 1999)(Judge Ripple's dissent).

The unique Allison severance plan was a freestanding post sale plan designed to induce former GM employees to remain with the sold Division. When James accepted the position with the successor company(Rolls Royce), she was only entitled to those discrete severance benefits provided by GM for the Allison sale and no other. James did everything required by the GM Allison Gas Turbine sales severance plan to become eligible for benefits under that discrete plan.

REASONS FOR GRANTING THE WRIT

1/ The Opinion Below Conflicts With Other Decisions Of Other United States Court Of Appeals On The Matter Of Judicial Interpretation Of Plain Plan Language

Dewitt v. Penn-Del Directory Corp., 106 F. 3d 514, 520 (3rd Cir. 1997). "A plan administrator may have discretion when interpreting the terms of the plan; however, the interpretation may not controvert the plain language of the document." See also *Keating v. Whitmore Mfg. Co.*,186 F. 3d 418 (3rd Cir. 1999)

Canseco v. Construction Laborers Pension Trust, 93 F. 3d 600, 606 (9th Cir. 1996). "We have consistently explained that(abuse of discretion occurs)...if they...construe provisions of (a) plan in a way that clearly conflicts with the plain language of the plan."

Whether or not an administrator is empowered with interpretive

discretion under *Firestone Tire & Rubber Co, v. Bruch, 489 U.S. 101 (1989)*should not affect judicial interpretation of a plan's plain, unambiguous language. *Firestone* requires judicial interpretation of plan language to determine whether the administrator has been given discretion to interpret. Thus *Firestone* suggests judicial scrutiny of plan language to determine if in context of the specific plan language and in a manner consistent with ordinary meaning of words used ordinarily, the plan administrator has denied benefits contrary to the plain meaning of the plan's language. If it's ***de novo*** to determine discretion then it's ***de novo*** to determine unambiguous, plain plan language as viewed from a reasonable man standard. See *McDaniel v. The Chevron Corporation,* 203 F. 3d 1099, 1110 (9th Cir. 2000)

The Fifth Circuit in *Walker v. Wal-Mart Stores, Inc.,* 159 F.3d 938 (5th Cir. 1998) found that the plain meaning of the plan's medical subrogation language required the beneficiary to tender all third party settlement funds until the medical plan was fully reimbursed. Eligibility for benefits is governed **in the first instance** by a plan's plain language. *Threadgill v. Prudential Securities Group, Inc.*, 145 F.3d 286, 292 (5th Cir. 1998).

If courts cannot alter a plan's plain meaning *Coleman v. Nationwide Life Ins. Co.,* 969 F. 2d 54, 57 (4th Cir. 1992), Cert. Denied 506 U.S. 1081 (1993); *Rodrique v. Western & So. Life Ins.,*948 F.2d 969,971(5th Cir. 1991), then an administrator cannot, even when empowered with *Firestone* discretion.

The Sixth Circuit in *Williams v. International Paper Company,* 227 F. 3d 707, 712 (6th Cir. 2000) held that under the arbitrary and capricious standard courts must determine whether the administrator's denial was rational in light of the plans provisions and where the plan's express language provided for the denied benefit the administrator's denial was arbitrary and capricious.

2. The Opinion Below Conflicts With *Firestone Tire & Rubber Co. v. Bruch,* 489 U. S. 101 (1989) On Judicial Review of Section 1132 (a)(1)(B) Denial of Benefits.

Firestone's rationale is grounded in the principles of trust law. 489 U.S. p.110. The conduct of a trust is created and governed by its written instrument. The conduct of an ERISA welfare plan is in the first instance determined and governed by the provisions of the plan language.

Whether the exercise "of a power is permissible or mandatory depends upon the terms of the trust" or plan. Id. P.112.

The universal effect of the *Firestone* holding has been that all ERISA plans provide for interpretive discretion. Judicial review of a benefit denial is thus effectively denied when courts ignore the plain meaning of plan language under the rubric of discretionary interpretation requiring *Firestone's* arbitrary and capricious judicial review.

GM simply concocted a *post hoc* reason for its denial...if the successor company(Rolls Royce) said you quit under its severance plan then you quit under the GM Allison sale severance plan...notwithstanding the plain plan language of this free standing severance welfare plan "....you voluntarily terminate " your employment with the successor company.

In the context of a sales severance plan designed to induce sold employees to remain with the sold physical assets of Allison Gas Turbine Division, there is only one reasonable meaning to "you voluntarily terminate" your employment with the successor company that is James by her voluntary, willful act left the employ of Rolls Royce(the only successor company). The act of termination was of her own volition-not a constructive *post hoc* reason of the plan administrator. The Opinion below found that the termination was not her voluntary act. "To no avail, she asked to stay with(Allison Rolls Royce) for lower pay." App.2a

CONCLUSION

This case presents a question of importance post *Firestone*--whether judicial review of a benefit decision by a plan administrator empowered with interpretive discretion may consider *de novo* whether the decision of the administrator was contrary to the plain meaning of the plan language.

Petitioner, LuAnn James respectfully requests that her petition for writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

United States Court of Appeals
For The Seventh Circuit
No. 99-4078

LuANN JAMES,

Plaintiff-Appellant,

V.

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division.
No. 97-C-1676-John D. Tinder, Judge.

ARGUED SEPTEMBER 7, 2000-DECIDED OCTOBER 16, 2000

Before BAUER, POSNER, and EVANS, *Circuit Judges.*

EVANS, *Circuit Judge.* LuAnn James wants us to determine that she was involuntarily terminated without cause from her employment. It is not our job to do that. This is a case arising under ERISA, the Employee Retirement Income Security Act of 1974 (29 U.S.C. §§ 1132 *et seq.),* and the employee welfare benefit plan we are reviewing gave the plan administrator discretion to interpret its terms. So our role is limited. We may only determine whether the administrator interpreted the plan in an arbitrary or capricious manner when benefits were denied upon a finding that Ms. James "quit" her job.

James was an office worker, apparently an excellent one, for General Motors, first in Detroit and then in Indianapolis, for 19 years, from 1974 to 1993. December 1993 GM sold the Allison Gas Turbine facility where James was working to the Allison Engine Company, which in turn was acquired by Rolls Royce. By accepting a job with AEC/Rolls, James was entitled for 3 years to certain continuing GM benefits. Plan documents said that she was not entitled to GM severance benefits if she voluntarily quit her position at AEC, but she would be entitled to GM severance benefits if she was terminated without cause by AEC during the 3-year period.

During the 3-year period, in December 1995, AEC was sold to Electronic Data Systems, which at the time was a wholly owned, independently managed subsidiary of GM. James was offered employment with EDS, but she refused. To no avail, she asked to stay with AEC for lower pay. She asked AEC to let her interview for a job with GM. (To ask for permission was required under the terms of the 1993 sale from GM to AEC). Again, AEC refused.

James then sought severance benefits from GM, arguing that she had been involuntarily terminated from AEC without cause during the 3year window. The severance benefits consist of a GM employment search or, if the search is unsuccessful, a 6-month separation allowance. GM denied the benefits, saying she was not entitled to anything because she quit. James filed the present suit. The district court granted GM's motion for summary judgment and James appeals.

As we have mentioned, GM's benefit plan was an "employee welfare plan" governed by ERISA. It gave GM the authority to determine eligibility for benefits and to construe provisions of the plan. Consequently, GM's interpretation may be reversed only if it was arbitrary or capricious. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Allison v. Dugan*, 951 F.2d 828, 832 (7th Cir. 1992). We do not interfere with the plan administrator's decision unless he "not only made the wrong call, but... 'downright unreasonable' one." *Chojnacki v. Georgia* Pacific Corp., 108 F.3d 810, 816 (7th Cir. 1997), quoting Fuller v. CBT Corp., 905 F.2d 1055, 1058 (7th Cir. 1990). A denial of benefits will not be set aside if it was based upon a reasonable interpretation of the plan documents. It does not matter whether the result reached by the administrator is one we would have arrived at in the first instance. *Ladd v.* I7T Corp., 148 F.3d 753 (7th Cir. 1998).

In other words, it is hard to overturn a decision of a plan administrator. And like many before her, James does not succeed. We find that the decision denying her benefits is neither arbitrary nor capricious.

When it sold its turbine facility to AEC, GM gave its employees a booklet titled "Your Benefits and Status as a General Motors Salaried Employee Following the Sale of Allison Gas Turbine Division." Page 4 of the booklet contains a template chart that indicates that salaried employees with 10 or more years of GM service at the time of the sale who "quit/terminated for cause within three years" would receive no separation allowance. However, employees "terminated by company (other than for cause) within three years" would receive placement in a GM job or a separation allowance.

James argues that by declining to go to work for EDS she did not

quit and was not terminated for cause, and thus deserves the severance benefits. GM argues that by refusing the EDS job, James voluntarily terminated her employment-i.e., she quit-and thus is not entitled to severance benefits. This case, then, rests on how "quit" is defined. James contends that her situation does not fit the plain and ordinary meaning of "quit." And perhaps in some sense it does not. But neither does it seem that, in the ordinary meaning of the words, she was terminated. The terms as they are meant to be applied in the plan documents may not be self-defining in all situations, the one here for instance. That is precisely why GM's interpretation that James quit is not arbitrary and capricious. "When ... the plan document does not furnish the answer to the question, the answer given by the plan administrator, when the plan vests him with discretion to interpret it, will ordinarily bind the court. That is implicit in the idea of deferential review of the plan administrator's interpretation." Ross v. *Indiana State Teachers's Assn Ins.* Trust, 159 F.3d 1001, 1010 (7th Cir. 1998), quoting *Gallo* v. *Amoco Corp.*, 102 F.3d 918, 922 (7th Cir. 1996).

Furthermore, GM's interpretation is bolstered by its general employee handbook, called "Working with General Motors." That booklet says severance benefits were not applicable "for severance arising out of the sale of a GM unit where the employee continues, or is offered the opportunity to continue, employment with the buyer." The district court noted that the booklet defines quit as: "A separation is classified as a quit if. you resign from the Corporation and do not retire; or you do not report to work at the end of an approved leave of absence and in accordance with the leave; or you are on layoff status and do not accept a suitable offer of employment or training as specified by GM policy." This definition reinforces the conclusion that. one quits if she does not accept a suitable offer of employment.

Nevertheless, James points out that people sometimes receive severance benefits from their old employer even if they have been offered a new job with a different employer. She points to *Anstett v. Eagle-Picher Industries, Inc.*, 203 F.3d 501, 505-06 (7th Cir. 2000), in which Eagle Picher's employees were immediately reemployed by the buyer of its plastics division. Eagle-Picher denied severance benefits, saying the spirit of its benefits package was to provide severance benefits for workers who lost their jobs. But the company's benefits package said "[salaried employees terminated other than for cause or voluntary separation, due to the exigencies of the business situation, will be entitled" to severance benefits. At 502. Because the plan did not grant discretion to the administrator, we looked at it *de novo* and held Eagle-Picher to the letter of its benefits package: "[The plan draws no

distinction between employees forced to go out and find other employment and employees who are re-hired by a purchaser, and we decline to write one into the policy." At 505. If Eagle Picher employees received the benefits, why shouldn't she, says James. GM sees two reasons, with which we agree. First, Eagle-Picher's plan gave no discretionary authority to the administrator and thus our review of the situation was *de novo,* not deferential. Second, the wording of Eagle-Picher's plan was absolute; it granted severance benefits to anyone "terminated other than for cause." By contrast, GM's specific plan for the turbine workers was not so clear, and its general employee manual unambiguously denied severance benefits to workers who retained their jobs with successor companies after GM units were sold.

James' final argument that GM violated its fiduciary duty by denying severance benefits is without merit. A fiduciary duty in this context arises only when there is a failure to provide material information regarding the plan and the fiduciary's silence is misleading. *Chojnacki.* Accordingly, the decision of the district court is
AFFIRMED.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
December 5, 2000
No. 99-4078

LUANN JAMES,
Plaintiff-Appellant,

V.

GENERAL MOTORS CORPORATION
Defendant-Appellee.

ORDER

On OCTOBER 30, 2000, the plaintiff-appellant filed a petition for rehearing and petition for rehearing *en banc.* All the judges on the original panel have voted to deny a rehearing, and none of the judges in active service have requested a vote on the petition for rehearing en banc.

The petitions for rehearing and for rehearing *en banc* are therefore DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT O INDIANA
INDIANAPOLIS DIVISION

LU-ANN JAMES,
Plaintiff,
vs. I P 97-1676-C-T/G
GENERAL MOTORS CORPORATION, et al,
Defendants.

Entry Discussing Cross Motions for Summary Judgment

The Plaintiff, Lu-Ann James, filed her complaint on October 10, 1997 against the Defendants, General Motors Corporation, the Finance Committee of the Board of Directors of General Motors Corporation and Allison Engine Company, Inc. ("Defendants")(1), alleging violations of the Employee Retirement Income Security Act ("ERISA"). Defendants moved for summary judgment on the basis that no genuine issue of material fact exists and that, as a matter of law, Plaintiffs ERISA claim must fail. The Plaintiff then filed a cross-motion for summary judgment. The parties' motions, briefs, and supporting evidence have been reviewed and, for the reasons set forth below, the court will find that the Defendants' motion for summary judgment should be **GRANTED** and the Plaintiffs motion for summary judgment should be **DENIED.** Accordingly, judgment will be entered in favor of the Defendants and against the Plaintiff, Lu-Ann James.

1. UNDISPUTED MATERIAL FACTS(2)

The Plaintiff began her employment with General Motors at its Detroit Diesel Allison Division in September 1974. She started as a Clerk III in hourly personnel and progressed through the following positions: Hourly Personnel Stenographer 111, Senior Personnel Associate Coordinator, Personal Information Systems, Senior Statistician and Analyst-Human Resources Department. At some point, although the parties do not specify when, she was transferred to General Motors' Allison Gas Turbine ("AGT") Facility in Indianapolis, Indiana. The parties do indicate, however, that the Plaintiff was working at AGT prior to December 1, 1993. Effective December 1, 1993, the AGT division was sold and its employees were transferred to the successor company, Allison Engine Company ("AEC"). Thereafter Rolls Royce purchased AEC, however, the name of the employer was not changed and employees continued to work for AEC.

Plaintiff was offered employment commencing December 1, 1993, with AEC, the successor company. At that time, Plaintiff had the following options: (1) refuse the job offer from AEC, be classified by General Motors as a Special Separation without entitlement to separation allowance, and seek employment elsewhere; or (2) accept the job offer from AEC, be placed on a Special Leave of Absence for up to three years, and be covered by the applicable provisions of the booklet entitled: "Your Benefits and Status as a General Motors Employee Following the Sale of Allison Gas Turbine Division." At the time of the sale (December 1, 1993) Plaintiff had completed 19 years of credited service with General Motors Corporation.

The Plaintiff accepted the job offer from AEC and, accordingly, she was placed on a Special Leave of Absence for up to three years and was to be covered by the applicable provisions of the booklet entitled: "Your Benefits and Status as a General Motors Employee Following the Sale of Allison Gas Turbine Division." Employees who transferred from General Motors to AEC, including the Plaintiff, received a copy of the booklet entitled "Your Benefits and Status as a General Motors Salaried Employee Following the Sale of Allison Gas Turbine Division." This booklet described policies of General Motors that remained applicable to such transferred employees while they were on the Special Leave of Absence. It also described conditions under which the Special Leave of Absence would terminate and the remaining benefit entitlement that such employees while they were on Special Leave of Absence. It also described conditions under which the Special Leave of Absence would terminate and the remaining benefit entitlement that such employees had under General Motors benefit plans.

At he time of the General Motors sale, December 1, 1993, and continuing thereafter through December 31, 1995, Plaintiff worked in the data processing activity of AEC holding positions of Group Leader- Data Preparation, Associate Coordinator, Personnel Information Systems, Senior Statistician and Analyzer, and Systems Analyst. The parties imply, by virtue of other proposed facts, that the Plaintiffs work in the data processing activity was part and parcel of AEC's Information Technology ("IT") activity.

In 1995, it was decided by AEC management that its Information Technology ("IT") activity would be assumed by Electronic Data Systems ("EDS"). This was, in essence, a component sale--AEC planned to sell its' IT activity, or department, to EDS. At that time, EDS was a wholly-owned, independently run subsidiary of General Motors Corporation. EDS had been acquired by General Motors in October 1984. Subsequent to its acquisition by General Motors, EDS maintained

its own employment policies and employee benefit plans. All EDS employees were subject to EDS employment policies and participated in EDS employee benefit plans. In mid-December, 1995, meetings were held with AEC information technology employees who had been selected for transfer to EDS. At such meetings, these employees were advised that AEC was getting out of the data processing (IT) business. These employees were further advised that each of them would receive a job offer from EDS and that if such job offer was not accepted there would not be any employment for them at AEC.(3)

On December 13, 1995, AEC employees who were accepting employment with EDS were sent a memorandum advising them of their entitlement under the AEC pension benefit plans and further advising them that, during the first three years of employment with EDS, they would be placed on a special leave of absence with AEC. The memorandum also described the employment security during such leave.

During December 1995, the Plaintiff had been on a disability leave of absence. On December 22, 1995, she was sent a letter advising her that upon her return from disability leave, she would have to decide whether to accept employment with EDS. On January 22, 1996, the Plaintiff returned to AEC for the purpose of returning to her previous employment status. The Plaintiff was advised that she was being offered employment with EDS and there was no job for her at AEC. She subsequently rejected the EDS employment offer.

Mr. Barry Smith, Vice President of Human Resources, AEC, testified that AEC employment policies provided that if an employee had received an offer of employment from EDS and refused the job offer, he or she would be considered a voluntary quit from AEC and would not be eligible for any of the AEC severance benefits due to job loss or position elimination. He also testified that because Plaintiff rejected the EDS employment offer, she was classified as a "quit" effective January 22, 1996, by AEC under its employment policies. Thus, under AEC employment policies pertaining to EDS transfers, Plaintiff had no entitlement to separation allowance or other separation payments from AEC because she was classified as a voluntary quit. The Plaintiff was told this by Mr. Smith.

After the Plaintiff declined the EDS employment offer, she met with AEC human resources for an exit interview. The Plaintiff was told at the exit interview that it was AEC's understanding that because she was considered a quit by AEC, she would not have entitlement under the "GM Template" to severance benefits and that General Motors was not obligated to attempt to place her in a GM employing unit. She was also told this by Mr. Smith.(4)

The "GM Template" is in fact a chart found on page four in the Booklet entitled "Your Benefits and Status as a General Motors Salaried Employee Following the Sale of Allison Gas Turbine Division." This chart indicates that if a salaried employee under age 60 with 10 or more years of credited service at the time of the sale (December 1, 1993) "quit" or was "terminated for cause" within three years (while on Special Leave of Absence), he or she would be a Special Separation from General Motors with no Separation Allowance. This chart also indicates that if a salaried employee under age 60 with 10 or more years of credited service at the time of the sale (December 1, 1993) was "terminated by the company (other than for cause)" within three years (while on Special Leave of Absence), he or she would receive "[p]lacement in a GM job, if available, a Special Separation - Return from Successor Company,' with Separation Allowance ....."

The booklet entitled "Your Benefits and Status as a General Motors Salaried Employee Following the Sale of Allison Gas Turbine Division" stated that:

"[t]his summary presents general information only and is based on the policy and benefit plan provisions in effect in November 1993 ... [e]ach of the benefit programs has its own terms and conditions, which, in all respects, control the benefits provided. Any reference to the payment of benefits is conditioned upon plan terms and your eligibility to receive benefits under the plans when your employment terminates."

It further provided that:

"General Motors also has reserved the right to construe and interpret these benefit programs. Each benefit program also has an appeal procedure which serves as the exclusive The decision on appeal is final and binding on general Motors and the participant and beneficiaries."

General Motors determined that the Plaintiff had no entitlement under the "GM Template." She appealed this decision under the General Motors Open Door Policy. On December 19, 1997, David E. Mowers, Director Policy Development and Employee Relations for General Motors, sent to the Plaintiff and her attorney the final determination of General Motors. Mr. Mowers explained in his December 19, 1997 letter that Plaintiff was not entitled to benefits under the "GM Template" because she had been offered continuing employment with EDS. Upon declining the EDS job offer, she was considered as a voluntary quit by AEC. Her decision declining the EDS job offer was considered by General Motors as a voluntary termination of employment thus making her ineligible for benefits under the "GM Template."

In addition to relying on AEC's determination that the Plaintiff was a "voluntary quit", Mr. Mowers also relied on the following language

discussing the Separation Allowance benefit contained in the document "Working with General Motors"

"[t]he Separation Allowance Plan is not applicable in the event of (1) transfers between General Motors and any of its wholly-owned or substantially wholly-owned domestic or foreign subsidiaries or (2) separation from any GM wholly owned or substantially wholly owned domestic or foreign subsidiary or for separation arising out of the sale of a GM unit where the employee continues, or is offered the opportunity to continue, employment with the buyer."

This same booklet, "Working with General Motors", also provides:

"A separation is classified as a quit if: you resign from the Corporation and do not retire; or you do not report to work at 8 the end of an approved leave of absence and in accordance with the leave; or you are on layoff status and do not accept a suitable offer of employment or training as specified by GM policy."

The Plaintiff has exhausted her administrative remedies under ERISA by appealing the General Motors' decision that she had no entitlement under the "GM Template" to Mr. Mowers, Director Policy Development and Employee Relations for General Motors.

II. SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56(c) provides that summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED. R. Civ. P. 56(c). The burden is on the moving party to demonstrate an absence of a "genuine issue as to any material fact." *Celotex Corp. v. Catert*, 477 U.S. 317, 323 (1986).

If a motion for summary judgment is properly plead, the non-movant must then set forth specific facts showing that there is a genuine issue for trial. *See* FED. R. Civ. P. 56(c); *Larimer v. Dayton Hudson Corp.*, 137 F.3d 497, 500 (7th Cir. 1998), *rehg denied.* All reasonable inferences will be drawn in favor of the non-movant, however, the non-movant must present more than conclusory allegations to defeat a motion for summary judgment; thus, the non-movant must "supply evidence sufficient to allow a jury to render a verdict in its favor." *See Mills v. First Fed. Sav. & Loan Assn of Belvidere* 83 F. 3d 833, 840 (7th Cir. 1996); Williams v. Ramos, 71 F.3d 1246, 1248 (7th Cir. 1995).

III. DISCUSSION

The Plaintiffs Complaint seeks benefits under an employee welfare benefit plan and seeks redress for violation of fiduciary duties imposed by the Employee Retirement Income Security Act of 1974 ("ERISA"). See 29 U.S.C. § 1132.

A. The Plaintiff's Right to Benefits Under GM's's Employee Welfare Benefit Plan

The parties agree that the severance plan under scrutiny in this instance was in fact an "employee welfare plan" governed under ERISA. See also *Jackson v. E.J. Brach Corp.*, 176 F.3d 971, 978 (7th Cir. 1999) ("[u]nder ERISA, severance benefit plans qualify as employee welfare plans"). The particular plan in question provided that:

General Motors also has reserved the right to construe and interpret these benefit programs. Each benefit program also has an appeal procedure which serves as the exclusive manner for resolution of all disputes concerning the interpretation or application of the program. The decision on appeal is final and binding on General Motors and the participant and beneficiaries.

See "Your Benefits and Status as a General Motors Salaried Employee Following the Sale of Allison Gas Turbine Division." The parties further agree that when the employee welfare plan governed by ERISA provides a means for administrative review to construe and interpret plan provisions, such as this plan did, that the district court's standard of review is whether the plan administrator's decision was arbitrary and capricious. *See also Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989) ("[a] denial of benefits ... is to be reviewed under a *de novo* standard unless the plan gives the administrator ... discretionary authority to determine eligibility for benefits or to construe the terms of the plan); *Celvbar v. CB Illinois, Inc.*, 106 F.3d 1368, 1379 (7th Cir. 1997), *cert. denied* 118 S. Ct. 56 (1997) (arbitrary and capricious standard of review applied when plan vests discretion in its administrators to construe the terms of the plan). In this instance, the administrator, Mr. Mowers, reviewed the Plaintiffs situation and interpreted the plan's language to exclude the Plaintiff from receiving benefits under the "GM Template" because she was considered a "voluntary quit." This decision is reviewed under the arbitrary and capricious standard. This is a very deferential standard and, accordingly, the court will defer to the administrator's decision unless it is

found that the administrator "not only made the wrong call, but that he made a 'downright unreasonable' one." *Chojnacki v. George Pacific Corp.*, 108 F.3d 810, 816 (7th Cir. 1997) (citation omitted). *See also Anderson v. Operative Plasters and Masons' Local No. 12*, 991 F.2d 356, 358 (7th Cir. 1993).

Under the arbitrary and capricious standard, a denial of benefits will not be set aside if the denial was based upon a reasonable interpretation of the plan documents. *See Cvelbar*, 106 F.3d at 1379; *Cuddington v. Northern Indiana Public Service Company (NIPSCO)*, 33 F.3d 813, 816-17 (7th Cir. 1994) (in applying deferential arbitrary and capricious standard of review to ERISA plan administrator's denial of claim, the court will uphold denial if it is based on a reasonable interpretation of the relevant plan documents). In reviewing the determination of the administrator, it is not the court's function to assess definitively whether the court, if faced directly with the same issue, would reach the same conclusion or even rely on the same authority. See *Cvelbar*, 106 F.3d at 1379. The court need only to decide whether the administrator's determination was reasonable and therefore not arbitrary or capricious. See Id.

Here, the Plaintiff argues that the decision was arbitrary and capricious because the administrator "converted" the plain meaning of the plan. Essentially, the Plaintiff argues that it was unreasonable for General Motors to consider the Plaintiff a "voluntary quit" based upon the plain language of the "GM Template." Instead, the Plaintiff asserts that the only reasonable interpretation is that the Plaintiff was "terminated by the company (other than for cause)" and, therefore, is entitled to benefits under the plan.

The "GM Template" addresses various employment options that might arise following the sale to AEC, in 1993. The "GM Template" discusses the consequences of (a) refusing a job offer with AEC; (b) remaining with AEC for three years; (c) termination by AEC (other than for cause) within three years; and (d) quitting or termination for cause by AEC within three years. The Plaintiff was offered and chose to accept employment with AEC in 1993. Thus, the first two options under the "GM Template" are inapplicable to the Plaintiffs situation. Rather, the dispute is whether she was terminated without cause from AEC or whether she quit AEC.

In order to make this determination, the Plaintiff argues that ERISA contract interpretation should be based on federal common law and that, accordingly, "[t]hese principles require us to interpret terms of ERISA plans in an ordinary and popular sense as would a person of average intelligence and experience." (Pl. Br. at 9). Thus, the Plaintiff

argues that the term "quit" as used in the "GM Template" should be given its ordinary and plain meaning of "to leave" or "to depart." See AMERICAN HERITAGE DICTIONARY (3d ed. 1992). To quit is also defined as "to leave a job." See Id. The Plaintiff argues that these terms do not accurately describe her situation--she asserts that she never left or departed AEC (the successor company under the "GM Template") but, instead, her job was sold to EDS and, therefore, her position and employment at AEC was in fact terminated without cause.

Regarding the same plain meaning argument, the Plaintiff also notes that in General Motors' booklet "Working With General Motors" (a booklet that is separate from that which contains the "GM Template"), "quit" is defined as follows:

"A separation is classified as a quit if: you resign from the Corporation and do not retire; or you do not report to work at the end of an approved leave of absence and in accordance with the leave; or you are on layoff status and do not accept a suitable offer of employment or training as specified by GM policy."

The Plaintiff attempts to use this language to her advantage by arguing that she does not fit within this definition of "quit" (presumably because she was not on "layoff status") and, accordingly, it was unreasonable, even under General Motors' policy, to classify her as a "voluntary quit" thereby denying her benefits under the plan.

Admittedly, the Plaintiff's situation does not fit neatly within this General Motors' definition of "quit" or within the dictionary definition of "quit". Importantly, however, her situation also does not fit neatly within the category of "terminated by the company (other than for cause)." The dictionary definition of "terminate" is "to bring an end to or halt" or "to discontinue the employment of." See AMERICAN HERITAGE DICTIONARY (3d ed. 1992). Arguably, AEC, the successor to the AGT division of General Motors, did not discontinue her employment--instead, her job was purchased by EDS and she was offered a substantially similar position at EDS. Accordingly, her employment opportunity at AEC would have arguably continued through EDS as a salaried employee of AEC on a special leave of absence, entitling her, under certain circumstances, to separation allowance benefits under AEC's benefit plans.

The "GM Template" fails to define the relevant terms "quit" and "terminated by the company (other than for cause)." It further fails to address specifically the possibility and effect, if any, that a subsequent sale of AEC, or a component of AEC, to a successor company might have on an employee's right to separation allowance under General Motors' employee welfare benefit plan. Thus, "GM Template" is

essentially silent on these points. In this instance, where a plan is silent as to the proper interpretation of pivotal terms, the Seventh Circuit opinion in *Ross v. Indiana State Teacher's Association* is particularly instructive. See 159 F.3d 1001 (7th Cir. 1998) *cert. denied*, 119 S. Ct. 1113 (1999).

In *Ross*, the Plaintiff applied for benefits under the employees long-term, disability plan governed by ERISA as an employee welfare benefit plan. The plan language indicated that the employee would be entitled to benefits if he or she was "unable to perform the substantial duties" of the job. This plan, like the plan in question here, gave the plan administrator, or trustee, the discretion to construe and interpret the terms of the plan. In doing so, the Board of Trustees determined that the phrase "unable to perform the substantial duties" meant "unable to perform the substantial duties with or without an accommodation" and, accordingly, denied benefits to Ross. The district court concluded that the Board of Trustees abused its discretion because the plain language of the plan did not include any reference to accommodations and, therefore, the Board was unreasonable in construing the plan terms in that manner. The employer appealed and the Seventh Circuit reversed. See *Id.* at 1101.

The *Ross* court recognized that when "the plan document does not furnish the answer to the question, the answer given by the plan administrator, when the plan vests him with discretion to interpret it, will ordinarily bind the court." *Id.* at 1010 (citation omitted). In essence, silence on a particular point or, as here, a particular term or situation, is properly interpreted by the plan administrator or trustee. Further, and significantly, the *Ross* court approved of the Board's reliance on the employee's job description, doctor's restrictions, and the overall policy underlying the ADA in formulating its' interpretation of the phrase "unable to perform the substantial duties." Thus, the Board was permitted to took outside the actual plan document in order to formulate its' interpretation of plan terms within that document. (5) See Id. at 1010-1011.

Similarly, the "GM Template" was silent as to the definition of "quit" and "terminated by the company (other than for cause)" and, further, the "GM Template" was also silent as to how a subsequent sale, or component sale, of AEC to a successor company would affect the General Motors employee working for AEC on Special Leave of Absence.(6) Thus, like the Board of Trustees in *Ross*, the General Motors plan administrator had the authority to interpret those terms and, in doing so, it was likewise proper for the plan administrator to look beyond the "GM Template" or the plan document to arrive at that determination.(7) In this instance, the General Motors plan

administrator relied on General Motors' policy, other General Motors' documents, and AEC's determination in concluding whether the Plaintiff was terminated or whether she quit her employment at AEC. Under the reasoning of *Ross,* this approach was reasonable in light of the plan language.

First, the Plaintiff asserts that "[b]ecause AEC/Rolls considered her a voluntary quit under their severance policy, GM considered her a voluntary quit under its policy." (Pl. Br. at 11). Plaintiff implicitly argues that this reliance on AEC's determination was unreasonable. As noted above, a plan administrator, empowered with the authority to interpret and construe the terms of the plan, is permitted to look beyond the plan document to determine a term's meaning. In this instance, it seems only reasonable that when one is trying to determine whether the Plaintiff quit her employment at AEC that one might rely, in part, on AEC's determination of whether that Plaintiff quit or whether AEC believes that it terminated her without cause. Next, and perhaps more significant, the plan administrator, in determining that the Plaintiff was a "voluntary quit", relied on General Motors policy set forth in its employee booklet entitled "Working with General Motors." This document provides, in relevant part,

"[t]he Separation Allowance Plan is not applicable in the event of (1) transfers between General Motors and any of its wholly-owned or substantially wholly-owned domestic or foreign subsidiaries or (2) separation from any GM wholly owned or substantially wholly owned domestic or foreign subsidiary or for separation arising out of the sale of a GM unit where the employee continues, or is offered the opportunity to continue, employment with the buyer."(Emphasis added).

Certainly, this passage indicates that where a suitable offer of continued employment is extended, despite the fact it may be rejected, no separation allowance is available. Again, the benefit to which the Plaintiff seeks is Separation Allowance and, therefore, it seems reasonable to rely on the specific language describing this benefit.

Similarly, the General Motors definition of "quit" does include a situation where the employee is "on layoff status and [you] do not accept a suitable offer of employment or training as specified by GM policy." The Plaintiff attempts to use this language to her advantage by pointing out that her exact situation does not fall within this definition, presumably because she is on a "special leave of absence" and is not on "lay-off status." While a "layoff status" is not the equivalent to a "special leave of absence", it is reasonable that might one consider it to be comparable. Drawing this comparison is reasonable in light of the fact that the particular situation giving rise to this lawsuit is not expressly

provided for in the "GM Template."

Again, given the deferential arbitrary and capricious. standard, the question is not whether her situation is best categorized as "terminat[ion] by the company (other than for cause)" or a "quit" but, rather, the proper inquiry is whether it was *reasonable* to interpret the plan's language as including the Plaintiffs situation as a quit. Under the reasoning in Ross, the General Motors plan administrator was reasonable in his approach and conclusion in determining that the Plaintiff was a quit from AEC thereby denying her benefits under the plan. Accordingly, while there might arguably be different plausible interpretations of the plan, the fact remains that the administrator's interpretation was a reasonable one and, therefore, was not arbitrary and capricious.

B. Alleged Violation of GM's Fiduciary Duties Imposed by ERISA(8)

In her Complaint, the Plaintiff asserts that General Motors (i.e. the plan administrator) had an obligation "to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... in accordance with the documents and instruments governing the plan." 29 U.S.C. § 1104(a)(1). She argues that General Motors violated this fiduciary duty when it failed to pay her benefits under the "GM Template." The court disagrees.(9)

An individual is a fiduciary with respect to a plan if he exercises discretionary authority over the management or administration of that plan. *See McGath v. AutoBody North Shore, Inc.*, 7 F.3d 665, 670 (7th Cir. 1993); 29 U.S.C. § 1002(21)(a). "Fiduciary duties attach not just to particular persons, but to particular persons performing particular functions." *McGath*, 7 F.3d at 670 *(quoting Hozier v. Midwest Fasteners, Inc.*, 908 F.2d 1155, 1158 (3rd Cir. 1990)). An employer can wear two hats: one as a fiduciary administering the plan and the other as the drafter of the plan's terms. Thus, because the functions are distinct, an employer does not act as a fiduciary when it amends or otherwise sets the terms of the plan. *See Id. See also Young v. Standard Oil (Indiana)*, 849 F.2d 1039, 1045 (7th Cir. 1988), *cert. denied* 488 U.S. 981 (1988) ("[a]n employer may therefore, unilaterally amend or eliminate a severance plan without violating ERISA ... [t]his is so because an employer is permitted to act in his dual capacity as both the manager of its business and a fiduciary with respect to unaccrued benefits")

When determining whether the Plaintiff was covered within the scope of its severance plan, General Motors was wearing its employer-business hat and not its fiduciary hat. In his determination, the

administrator was required to construe or interpret key terms of the plan, namely, "quit" and "terminated by the company (other than for cause)." By doing so, the administrator was "set[ting] the terms of the plan." *See McGath*, 7 F.3d at 670. Thus, this was a business decision that affected the overall scheme, or structure, of the severance plan, i.e., who the plan would cover was not a fiduciary function. *See Ames v. American Natl Can Co.*, 170 F.3d 751, 757 (7th Cir. 1999), *rehg denied* (changing the structure of its severance plan was a design change and "when employers make design changes in plans, they are not wearing their fiduciary hats"). Accordingly, the Plaintiffs claim for breach of fiduciary duty under ERISA must fail as a matter of law.

III. CONCLUSION

The court finds that no genuine issue of material fact exists on the critical facts set forth in Section I of this Entry and that, as a matter of law, the Plaintiff fails to establish any claim under ERISA. The Defendants' Motion for **Summary Judgment will be GRANTED** and the Plaintiffs Cross-Motion for Summary Judgment will be **DENIED.**

Footnotes:

1: Defendant Allison Engine Company, Inc., has previously been dismissed with prejudice from the underlying action and, accordingly, this motion resolves claims against only the remaining Defendants in this action as of the date of this Entry.

2: The parties filed their "Joint Statement of Undisputed Facts" on February 23, 1999. The court has reorganized the facts submitted by the parties to delete . redundancies and those facts deemed immaterial by the court. The court has also put the facts in chronological sequence, in so far as possible. Additionally, this section contains applicable language of the relevant General Motors documents upon which the court relies.

3: The parties do not indicate whether the Plaintiff was present at these meeting or if she was aware of these meetings. However, the Plaintiff does not contend that she was unaware of this information.

4: The issue before the court is only whether the General Motors administrator reasonably concluded that the Plaintiff's employment situation did not entitle her to benefits under the "GM Template" and not whether she has any entitlement to AEC benefits because, as mentioned earlier, AEC has previously been dismissed from this action. Mr. Barry's testimony, however, is relevant to the extent that Plaintiff argues that it was unreasonable for the General Motors administrator to rely on Mr. Barry's determination that Plaintiff was a "quit" from AEC.

5: Moreover, and as a side note, the Ross court also recognized that while ambiguities in an; insurance policy are construed in favor of the insured, in the ERISA context where the administrator has been empowered to

interpret the plan, this rule does not apply. *Id.* at 10 11 *(citing Morton v. Smith,* 91 F.3d 867, 871 n. 1 (7th Cir. 1996) (explaining that the rule of *contra proferenturn* applies only when courts undertake de novo review of an administrator's interpretation of an ERISA plan)). The court further stated, "[t]herefore, if we find that a term of the plan is ambiguous, it need not be construed in favor of Mr. Ross." *Id.* at 1011.

6: Importantly, the "GM Template" is merely a chart outlining the benefits that a salaried employee might be entitled to under certain circumstances following the sale of AGT to AEC. The "GM Template" is not the employee welfare plan under which the Plaintiff seeks benefits. However, neither party submitted or argued that the actual plan document provided any additional insight as to the definition of "quit" versus "terminated by the company (other than for cause)" and, presumably and logically, the plan itself does not discuss possible contingencies of future sales to successor companies. Accordingly, while the court discusses the Plaintiffs assertion of entitlement to benefits arising under the "GM Template", it notes that the Plaintiff is actually seeking benefits under the plan itself, not the "GM Template", which is merely a chart describing plan benefits.

7: In addition, the language contained within the booklet entitled "Your Benefits and Status as a General Motors Salaried Employee Following the Sale of Allison Gas Turbine Division" also provides significant support for the proposition that the plan administrator is not bound by the "GM Template" but may look at other documents when interpreting the language of the plan. It provides:

"[t]his summary presents general information only and is based on the policy and benefit plan provisions in effect in November 1993 ... [e]ach of the benefit programs has its own terms and conditions, which, in all respects, control the benefits provided. Any reference to the payment of benefits is conditioned upon plan terms and your eligibility to employment terminates."

8: The court notes that the Plaintiffs supporting brief and reply brief both fail to address the Defendants' argument regarding the Plaintiffs breach of fiduciary duty claim. Further, the court notes that the Plaintiff did not file a response to the Defendants' motion for summary judgement, presumably because she filed a cross motion for summary judgment. Certainly, the Plaintiffs failure to address this argument could reasonably be construed as an abandonment of this claim; nonetheless, the court will briefly discuss the merits of this claim.

9: First and foremost, the court disagrees because, as stated above, it was reasonable to interpret the Plaintiffs situation as a voluntary quit thereby granting her no entitlement to benefits. Thus, if the Plaintiff is not entitled to benefits under the employee welfare plan, it is hard to imagine that General Motors has somehow breached its fiduciary duty under ERISA by failing to provide such benefits. The court also disagrees for the reasons set forth in this section of the Entry.